

ESMER FRENCH

IBLA 91-238

Decided May 24, 1994

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying a protest of the inclusion of a parcel in an oil and gas sale.

Affirmed.

1. Public Lands: Generally

A BLM decision rejecting a protest of issuance of an oil and gas lease based on asserted ownership of the oil and gas rights will be affirmed where the public land records reflect title did not pass out of Federal ownership until 1964 when patent issued under the Color of Title Act, as amended, 43 U.S.C. §§ 1068-1068b (1988), reserving the oil and gas rights to the United States.

APPEARANCES: Esmer French, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Esmer French has appealed a March 8, 1991, decision of the Eastern States Office, Bureau of Land Management (BLM), concluding that the United States owns the oil and gas rights in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 35, T. 1 S., R. 5 W., Michigan Meridian, Calhoun County, Michigan. This decision was precipitated by appellant's protest of a decision by BLM to include the tract in an oil and gas lease sale.

The lands at issue were formerly within Federal oil and gas lease MIES 7760 which expired. In order to place the parcel in an oil and gas lease sale, BLM requested the Milwaukee District office to prepare an environmental assessment. In processing the request, the Milwaukee District, BLM, contacted the apparent owner of the surface estate, Elwood Van Antwerp by letter dated March 18, 1986, to inform him of the proposed leasing of the oil and gas rights under the land and to inquire as to any concerns he had about potential oil and gas operations on the land. Antwerp forwarded the letter to appellant French who had purchased the land from Antwerp.

French, convinced he owned the oil and gas rights, objected to BLM leasing the land. In response to a BLM request, French forwarded to BLM portions of a title abstract. The first entry in the abstract states that: "Upon reference to U.S. Land Entry Book it appears that Ennis Church located the S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 35, Township No. 1 South, Range No. 5 West,

containing 80 acres on July 28, 1860." The abstract also includes a copy of Patent No. 1237442 issued by the United States to Joseph E. Schroeder and Shirley I. Schroeder and Ronald J. Degraw and Jayne E. Degraw on December 1, 1964, pursuant to the Color of Title Act, as amended, 43 U.S.C. §§ 1068-1068b (1988). This patent conveyed the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 35 and reserved to the United States "all oil and gas in the lands so entered and patented, together with the right of the United States or its permittees, lessees, or grantees, to enter upon said land for the purpose of prospecting for and mining such deposits." It appears that appellant is the successor in interest to the patentees from the Government.

The BLM decision rejected appellant's claim to title to the oil and gas in the lands on the ground that the public land records maintained by BLM indicate that the Government retained all rights to the surface and minerals in the property until patent was issued in 1964 under the Color of Title Act subject to a reservation of the oil and gas rights. 1/ Accordingly, the BLM decision found that the "United States owns the oil and gas rights on the lands in question."

In his notice of appeal, appellant contends that "no record exists of the Government retaining any type of mineral rights for approximately 100 years." He further argues that there is no record of cancellation in the county seat. Additionally, appellant asserts that his predecessors in interest appeared to hold the mineral rights since private leases were issued to oil companies.

[1] Research of the public land records discloses no patent of the tract of land at issue out of public ownership prior to the Color of Title patent in 1964 which reserved the oil and gas to the United States. Reference to the "tract book" for the township maintained by the General Land Office (GLO) and (more recently) BLM in which applications, entries, and issuance of patents are recorded discloses that an application to purchase the S $\frac{1}{2}$ SW $\frac{1}{4}$ was made by Ennis Church on July 28, 1860. The tract book reflects that the purchase price of \$20 or \$0.25 per acre was tendered by Church for the 80-acre tract and receipt number 17304 was issued therefor on that date. The copy of the receipt in the record signed by the Register, after acknowledging receipt of the purchase price, states that "on presentation of this certificate to the Commissioner of the General Land Office, the said Ennis Church shall be entitled to receive a Patent for the Lot above described." However, the tract book entry was subsequently stricken with the notation "Cancelled-See letter to R & R & Ennis Church Feb. 2, 1866."

A photocopy of the reverse side of the receipt contains a similar notation: "Cancelled - See letter to Ennis Church Feb. 2, 1866." The

1/ The BLM decision also contains an erroneous statement that a "patent" was issued to Ennis Church for the property. There is no evidence of any patent issuing for the tract other than the 1964 patent which reserved the oil and gas rights to the United States.

basis for cancellation of the entry is more fully explained in a letter dated February 2, 1866, from the Commissioner of the GLO to Ennis Church stating:

In reply to your letter * * * enclosing Ionia Duplicate [Certificate] No. 17304, I can state that said was cancelled for conflict with Rail Road Grant, of which the Register and Receiver at Ionia, were advised by letter dated June 7th 1861, and instructed to notify you to make application through that Office for return of purchase money.

Thus, it is clear from the public land records that no patent issued for the lands in question prior to the 1964 patent reserving oil and gas to the United States. Accordingly, there is no basis in the record for appellant's claim to the oil and gas rights in the land. An appellant who does not show adequate reason for appeal and, as appropriate, support the allegation with argument or evidence showing error cannot be afforded favorable consideration. Joe B. Kearl, 119 IBLA 122, 124 (1991). A party challenging a BLM determination has the burden of establishing by a preponderance of the evidence that the determination is erroneous. Bender v. Clark, 744 F.2d 1424, 1429 (10th Cir. 1984). Absent a showing of error, we must affirm BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

John H. Kelly
Administrative Judge